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10/620,233

07/14/2003

Patrick J. Kelly

55474/7

8520

31013

7590

07/13/2009

KRAMER LEVIN NAFTALIS & FRANKEL LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
1177 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

EXAMINER

COBANOGU, DILEK B

ART UNIT

PAPER NUMBER

3626

NOTIFICATION DATE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PATRICK J. KELLY and CHARLES J. CONROY

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Application 10/620,233  
Technology Center 3600

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Mailed: July 13, 2009

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Before JOYCE GUNTER-RILEY, Review Paralegal  
GUNTER-RILEY, Review Paralegal

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received by the Board of Patent Appeals and Interferences on June 29, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated October 22, 2008. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. While reference to page and line number of the specification >requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the

structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

The "Summary of claimed subject matter" appearing on pages 4-7 of the Appeal Brief filed October 22, 2008 is deficient because it does not separately map independent claims 1, 13 and 20 to the specification. Correction is required.

CONCLUSION

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Application No. 10/620,233

Accordingly, it is ORDERED that the application is returned to the Examiner:

1) hold the Appeal Brief filed October 22, 2008 defective, as required by 37 CFR § 41.37(d);

2) notify the Appellant to submit a “paper” which corrects the Appeal Brief’s Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v); and

3) for such further consideration

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797

/jgr/

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